

Federal Reserve System

§ 238.66

the 61st day after the date that a complete declaration was filed with the appropriate Reserve Bank. Such notification must be in writing.

(iv) *Filings by savings and loan holding companies that do not meet requirements.*

(A) For savings and loan holding companies that are engaged in financial holding company activities as of July 21, 2011 but do not meet the requirements of § 238.63, a declaration must be filed with the appropriate Reserve Bank by December 31, 2011, specifying:

(1) The name and head office address of the savings and loan holding company and of each depository institution controlled by the savings and loan holding company;

(2) The financial holding company activities that the savings and loan holding company is engaged in;

(3) The requirements of § 238.63 that the savings and loan holding company does not meet; and

(4) A description of how the savings and loan holding company will achieve compliance with § 238.63 prior to June 30, 2012.

(B) A savings and loan holding company covered by this subparagraph will be subject to:

(1) The notice, remediation agreement, divestiture, and any other requirements described in § 225.83 of this chapter; or

(2) The activities limitations and any other requirements described in § 225.84 of this chapter, depending on which requirements of § 238.63 the savings and loan holding company does not meet.

(f) *Requests to be treated as a financial holding company submitted as part of an application to become a savings and loan holding company.* A company that is not a savings and loan holding company and has applied for the Board's approval to become a savings and loan holding company under section 10(e) of the HOLA (12 U.S.C. 1467a(e)) may as part of that application submit a request to be treated as a financial holding company. Such requests shall be made and reviewed by the Board as described in § 225.82(f) of this chapter.

(g) *Board's authority to exercise supervisory authority over a savings and loan holding company treated as a financial holding company.* An effective election to be treated as a financial holding

company does not in any way limit the Board's statutory authority under the HOLA, the Federal Deposit Insurance Act, or any other relevant Federal statute to take appropriate action, including imposing supervisory limitations, restrictions, or prohibitions on the activities and acquisitions of a savings and loan holding company that has elected to be treated as a financial holding company, or enforcing compliance with applicable law.

§ 238.66 Ongoing requirements.

(a) *In general.* A savings and loan holding company with an effective election to be treated as a financial holding company is subject to the same requirements applicable to a financial holding company, under sections 4(l) and 4(m) of the Bank Holding Company Act and section 804(c) of the Community Reinvestment Act of 1977 (12 U.S.C. 2903(c)) as if the savings and loan holding company was a bank holding company.

(b) *Consequences of failing to continue to meet applicable capital and management requirements.* A savings and loan holding company with an effective election to be treated as a financial holding company that fails to meet applicable capital and management requirements at § 238.63 is subject to the notice, remediation agreement, divestiture, and any other requirements described in § 225.83 of this chapter.

(c) *Consequences of failing to continue to maintain a satisfactory or better rating under the Community Reinvestment Act at all insured depository institution subsidiaries.* A savings and loan holding company with an effective election to be treated as a financial holding company that fails to maintain a satisfactory or better rating under the Community Reinvestment Act at all insured depository institution subsidiaries is subject to the activities limitations and any other requirements described in § 225.84 of this chapter.

(d) *Notice and approval requirements for conducting financial holding company activities; permissible activities.* A savings and loan holding company with an effective election to be treated as a financial holding company may conduct the activities listed in § 225.86 of this chapter subject to the notice, approval,

§ 238.71

and any other requirements described in §§ 225.85 through 225.89 of this chapter.

Subpart H—Notice of Change of Director or Senior Executive Officer

§ 238.71 Purpose.

This subpart implements 12 U.S.C. 1831i, which requires certain savings and loan holding companies to notify the Board before appointing or employing directors and senior executive officers.

§ 238.72 Definitions.

The following definitions apply to this subpart:

(a) *Director* means an individual who serves on the board of directors of a savings and loan holding company. This term does not include an advisory director who:

- (1) Is not elected by the shareholders;
- (2) Is not authorized to vote on any matters before the board of directors or any committee of the board of directors;
- (3) Provides only general policy advice to the board of directors or any committee of the board of directors; and
- (4) Has not been identified by the Board or Reserve Bank in writing as an individual who performs the functions of a director, or who exercises significant influence over, or participates in, major policymaking decisions of the board of directors.

(b) *Senior executive officer* means an individual who holds the title or performs the function of one or more of the following positions (without regard to title, salary, or compensation): president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, or chief investment officer. *Senior executive officer* also includes any other person identified by the Board or Reserve Bank in writing as an individual who exercises significant influence over, or participates in, major policymaking decisions, whether or not hired as an employee.

(c) *Troubled condition* means:

- (1) A savings and loan holding company that has an unsatisfactory rating

12 CFR Ch. II (1–1–12 Edition)

under the applicable holding company rating system, or that is informed in writing by the Board or Reserve Bank that it has an adverse effect on its subsidiary savings association.

(2) A savings and loan holding company that is subject to a capital directive, a cease-and-desist order, a consent order, a formal written agreement, or a prompt corrective action directive relating to the safety and soundness or financial viability of the savings association, unless otherwise informed in writing by the Board or Reserve Bank; or

(3) A savings and loan holding company that is informed in writing by the Board or Reserve Bank that it is in troubled condition based on information available to the Board or Reserve Bank.

§ 238.73 Prior notice requirements.

(a) *Savings and loan holding company*. Except as provided under § 238.78, a savings and loan holding company must give the Board 30 days' written notice, as specified in § 238.74, before adding or replacing any member of its board of directors, employing any person as a senior executive officer, or changing the responsibilities of any senior executive officer so that the person would assume a different senior executive position if the savings and loan holding company is in troubled condition.

(b) *Notice by individual*. An individual seeking election to the board of directors of a savings and loan holding company described in paragraph (a) of this section that has not been nominated by management, must either provide the prior notice required under paragraph (a) of this section or follow the process under § 238.78(b).

§ 238.74 Filing and processing procedures.

(a) *Filing notice*—(1) *Content*. The notice required in § 238.73 shall be filed with the appropriate Reserve Bank and shall contain:

- (i) The information required by paragraph 6(A) of the Change in Bank Control Act (12 U.S.C. 1817(j)(6)(A)) as may be prescribed in the designated Board form;